POH WENG NAM

v.

PP & ANOTHER APPEAL

COURT OF APPEAL, PUTRAJAYA
AZIAH ALI JCA
MOHTARUDIN BAKI JCA
MOHD ZAWAWI SALLEH JCA
[CRIMINAL APPEALS NO: P-05-291-2010
& P-05-292-2010]
10 APRIL 2013

CRIMINAL LAW: *Penal Code - Section 302 - Conviction based on circumstantial evidence - Whether intention to cause bodily injury established - Whether injuries inflicted sufficient in ordinary course of nature to cause death - Whether mens rea under s. 300 Penal Code made out - Whether conviction substituted with one under s. 304(b) Penal Code*

CRIMINAL PROCEDURE: *Appeal - Evidence - Conviction based on circumstantial evidence - Whether intention to cause bodily injury established - Whether injuries inflicted sufficient in ordinary course of nature to cause death - Whether mens rea under s. 300 Penal Code made out - Whether conviction under s. 302 Penal Code substituted with one under s. 304(b) Penal Code*

EVIDENCE: *Circumstantial evidence - Whether nexus between appellants and death of deceased proven - Whether intention to cause bodily injury established - Whether injuries inflicted sufficient in ordinary course of nature to cause death - Penal Code, ss. 302 & 304(b)*

The appellants were charged for murder, an offence under s. 302 of the Penal Code ('the Code'). In the High Court, they were both convicted and sentenced to death and hence this appeal. It was the appellants' argument that the prosecution could not meet the burden of proving that the appellants had committed the said offence but was content to concede that the appellants were guilty of a lesser offence of culpable homicide not amounting to murder which was punishable under s. 304(b) of the Code. Hence, the ground which had to be considered was whether the appellant's conviction was fit to be sustained under s. 302 of the Code or would it be a case of conversion of conviction and sentence under s. 304 of the Code.

Held (upholding conviction; amending sentence to ten years' imprisonment)

Per Mohd Zawawi Salleh JCA delivering the judgment of the court:

(1) There was no dispute that the evidence adduced by the prosecution was wholly circumstantial in nature. There were sufficient evidence that proved the nexus between the appellants and the death of the deceased. (paras 28 & 34)

(2) The cause of death of the deceased being homicidal was not disputed. Based on the post-mortem examination, there was no doubt that the death of the deceased was the result of "a blunt trauma on the head which caused a haemorrhage and swelling of the brain". An inference that the appellants had the intention to cause bodily injury to the deceased could be made from the nature of the injuries sustained by the deceased. (paras 35 & 36)

(3) Although the injuries had resulted in the death of the deceased, however the prosecution had not led sufficient evidence to prove beyond reasonable doubt that the injuries inflicted upon the deceased were sufficient in the ordinary course of nature to cause death. The circumstantial evidence did not bring home the specific *mens rea* under s. 300 of the Code against both the appellants. (para 38)

(4) The appellants' conviction and sentence under s. 302 of the Code could not be sustained but considering the gravity of the assault which had finally led to the death of the deceased, the appellants would be certainly guilty under s. 304(b) of the Code. Thus, the conviction for sentence of murder was substituted with one of culpable homicide not amounting to murder under s. 304(b) of the Code. (para 39)

(5) Section 304(b) of the Code provides the maximum penalty of ten years' imprisonment which, in any given case, should be reserved for and imposed only in exceptional cases. The offence committed by the appellants was serious and it had caused an innocent life of a young man. In the circumstances of the case, a sentence of ten years' imprisonment would meet the ends of justice. (paras 42 & 43)

Bahasa Malaysia *Translation Of Headnotes*

Perayu-perayu telah dituduh dengan membunuh iaitu satu kesalahan di bawah s. 302 Kanun Keseksaan ('Kanun'). Di Mahkamah Tinggi, mereka telah disabitkan dan dihukum mati dan dengan itu, rayuan ini. Adalah hujahan perayu-perayu bahawa pihak pendakwaan tidak berjaya melepaskan beban membuktikan kesalahan tersebut, namun rela mengakui bahawa mereka bersalah atas kesalahan yang lebih kecil, homisid salah yang tidak terjumlah kepada pembunuhan, yang boleh dihukum di bawah s. 304(b) Kanun. Maka, alasan yang perlu dipertimbangkan adalah sama ada sabitan perayu-perayu sesuai dikekalkan di bawah s. 302 Kanun atau adakah ia suatu kes yang perlu ditukar sabitan dan hukumannya di bawah s. 304 Kanun.

Diputuskan (mengekalkan sabitan; meminda hukuman kepada sepuluh tahun penjara)
Oleh Mohd Zawawi Salleh HMR menyampaikan penghakiman mahkamah:

(1) Tidak dipertikaikan bahawa keterangan yang dikemukakan oleh pihak pendakwaan adalah secara keseluruhannya berunsur ikut keadaan. Terdapat keterangan yang mencukupi bagi membuktikan kaitan antara perayu-perayu dan kematian si mati.

(2) Kematian si mati yang diakibatkan oleh pembunuhan tidak dipertikaikan. Berdasarkan pemeriksaan bedah siasat, tidak diragui bahawa kematian si mati adalah berpunca daripada "a blunt trauma on the head which caused a haemorrhage and swelling of the brain". Satu inferen bahawa perayu-perayu mempunyai niat untuk menyebabkan kecederaan tubuh badan kepada si mati boleh dibuat daripada kecederaan-kecederaan yang dialami oleh si mati.

(3) Walaupun kecederaan-kecederaan tersebut menyebabkan kematian si mati, walau bagaimanapun pihak pendakwaan tidak mengemukakan keterangan yang mencukupi untuk membuktikan melampaui keraguan munasabah bahawa kecederaan yang dialami oleh si mati mencukupi dalam amalan biasa untuk menyebabkan kematian. Keterangan ikut keadaan tidak menunjukkan *mens rea* khusus di bawah s. 300 Kanun terhadap perayu-perayu.

(4) Sabitan dan hukuman perayu-perayu di bawah s. 302 Kanun tidak boleh dikekalkan tetapi mempertimbangkan keberatan kesalahan yang menjurus kepada kematian si mati, perayu-perayu jelas bersalah di bawah s. 304(b) Kanun. Oleh itu, sabitan bagi hukuman membunuh digantikan dengan kesalahan homisid yang tidak terjumlah kepada pembunuhan di bawah s. 304(b) Kanun.

(5) Seksyen 304(b) Kanun memperuntukkan penalti maksimum sepuluh tahun penjara yang, walau apa pun, sepatutnya digunakan dan dikenakan hanya dalam kes-kes yang luar biasa. Kesalahan yang dilakukan oleh perayu-perayu adalah serius dan ia telah menyebabkan kematian seorang pemuda yang tidak bersalah. Dalam keadaan tersebut, hukuman sepuluh tahun penjara sememangnya adil.

Case(s) referred to:

Cheong Kam Kuen v. PP [2012] 8 CLJ 537 FC ***(refd)***
Chow Kok Keong v. PP [1998] 2 CLJ 469 FC ***(refd)***
Dato' Mokhtar Hashim & Anor v. PP [1983] 2 CLJ 10; [1983] CLJ (Rep) 101 FC ***(refd)***
PP v. Hanif Basree Abdul Rahman [2007] 2 CLJ 33 CA ***(refd)***
PP v. Megat Shahrizat Megat Shahrur [2011] 8 CLJ 893 FC ***(foll)***
Rampal Singh v. State of UP [2012] 8 SCC 289 ***(foll)***
Tham Kai Yau & Ors v. PP [1976] 1 LNS 159 FC ***(foll)***
Virsa Singh v. The State of Punjab [1958] SCR 1495 ***(refd)***

Legislation referred to:

Penal Code, ss. 299, 300, 302, 304(a), (b)

(*Criminal Appeals No: P-05-291-2010)*
For the appellant - Karpal Singh (Sangeet Kaur Deo with him); M/s Karpal Singh & Co
For the respondent - Nurulhuda Nur'aini Mohamad Nor; DPP

(Criminal Appeals No: P-05-292-2010)
For the appellant - R Sanisvara Nethaji Rayer; M/s Nethaji Rayer & Co
For the respondent - Nurulhuda Nur'aini Mohamad Nor; DPP

[Appeal from High Court, Pulau Pinang; Criminal Trials No: 45-24-2007 & 45-43-2007]

Reported by S Barathi

JUDGMENT

Mohd Zawawi Salleh JCA:

The Antecedents

[1] The appellants were charged with the following offence:

> Bahawa kamu bersama-sama lima orang yang masih bebas, pada 30 September 2006, di antara jam lebih kurang 10.00 malam, di tepi Jalan Pantai Bersih Butterworth di dalam Daerah Seberang Perai Utara di dalam Negeri Pulau Pinang, dengan niat bersama telah melakukan kesalahan membunuh hingga menyebabkan kematian seorang bernama Lee Lai Beng [K/P: 660718-07-5663]. Oleh yang demikian kamu telah melakukan satu kesalahan di bawah seksyen 302 Kanun Keseksaan dan dibaca bersama seksyen 34 Kanun yang sama.

[2] The appellants were tried at the Penang High Court. At the end of the defence case, the appellants were convicted and sentenced to death. Hence this appeal.

[3] During the course of argument, En Karpal Singh, learned counsel for the first appellant and Encik R Nethaji Rayer, learned counsel for the second appellant, submitted that the prosecution could not meet its burden of proving the appellants committed the offence of murder, but was content to concede that the appellants were guilty of lesser offence of culpable homicide not amounting to murder, punishable under s. 304(b) of the Penal Code.

[4] We are satisfied that the appellants had consented to permitting their learned counsels to concede to the court that they were guilty of a lesser offence of culpable homicide not amounting to murder and were aware of the potential consequences of their decisions.

[5] Confronted with the appellants' concessions, we asked learned deputy public prosecutor in the person of Puan Nurulhuda Nur'aini bt Mohamad Nor to get instruction from Attorney-General's Chambers. After a short adjournment, learned deputy public prosecutor informed us that the prosecution agreed to the concession by the appellants and would urge the court to impose the sentence under s. 304(a) of the Penal Code.

[6] The court, in an appropriate case, can act on a concession made by the parties. In *Chow Kok Keong v. PP* [1998] 2 CLJ 469; [1998] 2 MLJ 337, Edgar Joseph Jr FCJ had this to say at p. 483 (CLJ); p. 347 (MLJ):

> 43. Now, it is undoubtedly the law, that in a criminal case, we are in no way bound to act on a concession of the sort made by Mr. Karpal Singh in this case, but, that we can do so, in an appropriate case, we have no doubt. In this context, we need no more than refer to the numerous instances, when in appeals against conviction for the offence of trafficking in dangerous drugs in contravention of section 39B of the Act, the prosecution had conceded that the conviction could not stand, but that a conviction for some lesser offence, such as, for possession under section 6 or even section 12 of the Act, be substituted, and upon the defence agreeing to such a course, we had invariably, acted on the concession, without query, and substituted for such lesser offence.

[7] In the instance case, the court recognises that the concession made by the appellants represents a voluntary and intelligent choice among the alternative courses of action open to them as advised by their learned counsels. The court cannot deny the appellants the opportunity to act in their best interests.

[8] Be that as it may, we have scrutinised the entire evidence adduced before the High Court and it is our judgment that this is a case which can be reasonably be brought within s. 304(b) of the Penal Code.

[9] We now give our reasons.

The Prosecution Case

[10] Briefly stated, the prosecution case is that Lee Lai Hap (SP3) and the deceased were brothers. On 30 September 2006, the deceased and his son visited SP3; and they had dinner together.

[11] After dinner, SP3 received a phone call from one Ah Hua demanding repayment of the money loaned to him by the second appellant. SP3 informed Ah Hua that he could not pay. Ah Hua got agitated and verbally abused SP3. SP3 told off Ah Hua by saying: "Kalau tak ada wang, kamu nak pukul ke?"

[12] Both brothers were later having a conversation outside SP3's house, at Jalan Pantai Bersih. Suddenly, three cars stopped at a nearby shop and men armed with samurai swords emerged from the cars and chased after the brothers.

[13] SP3 ran towards a nearby village and overheard the second appellant shouting "tetak dia, tetak dia". SP3 was able to recognise the voice because he had met and spoken to the second appellant on several occasions.

[14] SP3 fell and was attacked by the second appellant and other unknown men. He was slashed on the chest and forearm. SP3 was begging for mercy. Villagers nearby started arriving at the scene after having heard the commotion. The armed men fled the scene.

[15] Jeffrey Wee Soon Kooi (SP4), the owner of the motor repair shop confirmed that all three cars, a black Honda City, a Proton Wira and a Proton Perdana were parked in front of his shop. The men were armed with samurai swords and they were chasing after SP3.

[16] Khor Sim Sim (SP9), a customer who was also present at the shop, corroborated SP4's evidence. SP9 also recounted the event in which the first appellant was pointing the samurai sword at him. SP9 called for the ambulance.

[17] Meanwhile, Tan Han Siew (SP10) was riding through Jalan Pantai Bersih when he met the deceased. He gave the deceased a ride. SP10 said a black Honda City followed them in pursuit and he was able to see someone armed with a samurai sword.

[18] SP10's motorcycle crashed and the deceased ran towards a motor repair shop while SP10 ran towards a nearby village. He saw men emerged from the car and chased after the deceased. SP10 later returned and found the deceased with blood on his head.

[19] Both SP3 and the deceased were sent to Hospital Seberang Jaya. SP3 confirmed that the deceased was still conscious as they were having a conversation when they arrived at the hospital. The deceased told SP3 that the second appellant and his men totally disregarded the law. The deceased passed away on 4 October 2006.

[20] Autopsy on the deceased's body was performed by the pathologists, Dr Bhupinder Singh (SP17). He confirmed that there were five slash wounds on the deceased's chest and forearm. The cause of death was 'severe head injury due to blunt trauma to the head'.

The Defence Case

[21] Defence case in a nutshell is as follows: At the material time, they worked for a money lender named Ah Por. The second appellant confirmed that one Ah Hua served as the debt collector.

[22] On 30 September 2006, both of the appellants were working. One Ho Han Choon came to the shop looking for Ah Por. The second appellant called Ah Por informing him that his friend wished to see him. Ah Por told the second appellant to bring along Ho Han Choon and they will have dinner together.

[23] Both of the appellants and Ho Han Choon then proceeded to the restaurant. The appellants and one Tan Tian Ho rode the second appellant's Honda City, while Ho Han Choon drove his Proton Wira.

[24] When they were riding along Jalan Pantai Bersih, the second appellant saw SP3 by the roadside, together with the deceased. The second appellant wished to have a word with SP3, thereby he stopped his car by the roadside.

[25] The second appellant said that when he was about to set foot outside his car, he saw a group of men armed with samurai swords came and started to chase after SP3. He immediately shut the car door and observed the chase in the car.

[26] Both of the appellants denied that they were involved in the chase, the assault of SP3, and causing the deceased's death. They denied all the assertions made by the prosecution's witnesses. In essence, their defence was that they were at the wrong place at the wrong time.

The Appellant's Appeal

[27] Both of the appellants have filed separate petitions of appeal. For purposes of convenience and to avoid unnecessary repetition, we will deal with the issues raised together.

[28] In the instant case, there is no dispute that the evidence adduced by the prosecution is wholly circumstantial in nature. The law on circumstantial evidence is clear. In *Dato' Mokhtar Hashim & Anor v. PP* [1983] 2 CLJ 10; [1983] CLJ (Rep) 101; [1983] 2 MLJ 232, the Federal Court stated that:

> Where circumstantial evidence is the basis of the prosecution case the evidence proved must irresistibly point to one and only one conclusion, the guilt of the accused, but in a case tried without a jury the failure by the court to expressly state this is not fatal and it would suffice if it merely says that it is satisfied as to the guilt of the accused beyond reasonable doubt (*Jayaraman and Ors v. Public Prosecutor* [1982] 2 MLJ 306, 310).

[29] In *PP v. Hanif Basree Abdul Rahman* [2007] 2 CLJ 33 (CA), the court had this to say:

> 68. Where the evidence is wholly circumstantial, what has to be considered is not only the strength of each individual strand of evidence but also the combined strength of these strands when twisted together to make a rope (See *Chun Chween Kong v. Public Prosecutor* [1962] 1 LNS 22; [1962] MLJ 307). There is no sufficient evidence to connect the respondent with killing. Circumstantial evidence should be such that when you look at all surrounding circumstances, you find such a series of undersigned, unexpected, coincidences that, as a reasonable person you will find your judgment is compelled to one conclusion. If the circumstantial evidence is such as to fall short of that standard, if it does not satisfy that test, if it leaves gaps, then it is of no use at all. (See *Idris v. Public Prosecutor* [1960] 1 LNS 40; [1960] MLJ 96).

[30] The only ground which now needs to be considered in this appeal is whether on the existing facts and circumstances of the case, the conviction of the appellants is fit to be sustained under s. 302 of the Penal Code, or would it be a case of conversion of conviction and sentence under s. 304 of the Penal Code.

[31] We are of the opinion that elucidative discussion on the legal principles governing the distinction between ss. 299 and 300 of the Penal Code on the one hand and s. 304(a) and (b) of the Code on the other, would be necessary to precisely answer the question raised.

[32] The Federal Court in *PP v. Megat Shahrizat Megat Shahrur* [2011] 8 CLJ 893 had the occasion to discuss and illustrate the difference between s. 299 and 300 of the Penal Code and the correct application of the two sections. Richard Malanjum CJSS, after having referred to the case of *Tham Kai Yau & Ors v. PP* [1976] 1 LNS 159; [1977] 1 MLJ 174, said as follows:

> ... Where there is an intention to kill, as in (a) and (1), the offence is always murder. Where there is no intention to cause death or bodily injury, then (c) and (4) apply. *Whether the offence is culpable homicide or murder depends upon the degree of risk to human life. If death is a likely result, it is culpable homicide; if it is the most probable result, it is murder.* Illustration (d) of section 300, Penal Code is a case of this description. Where the offender knows that the particular person injured is likely, either from peculiarity of constitution, immature age, or other special circumstances, to be killed by an injury which would not ordinarily cause death, it is murder. Illustration (b) of section 300, Penal Code is a good example. The essence of (b) and (3) is this. It is culpable homicide if the bodily injury intended to be inflicted is likely to cause death; it is murder, if such injury is sufficient in the ordinary course of nature to cause death. Illustration (c) given in section 300, Penal Code is an example. It is on a comparison of these two limbs of section 299 and section 300 that the decision of doubtful cases as the present must generally depend. The distinction is fine, but noticeable. *In the last analysis, it is a question of degree of probability.*
>
> 14. *Thus, if death is an imminent result, it falls under section 300. If on the other hand, that death is a likely result, it falls under section 299.* It would be safe to conclude that all cases under section 300 would fall under section 299 as well, but this is not necessarily so *vice versa*. (emphasis added).

[See also *Cheong Kam Kuen v. PP* [2012] 8 CLJ 537; [2013] 1 MLJ 15]

[33] Concerning the distinction between ss. 302 and 304 of the Penal Code, the Supreme Court of India in *Rampal Singh v. State of UP* [2012] 8 SCC 289, had this to say:

> 17. Having noticed the distinction between 'murder' and 'culpable homicide not amounting to murder', now we are required to explain the distinction between the application of Section 302 of the Code on the one hand and Section 304 of the Code on the other.

18. In *Ajit Singh v. State of Punjab* ([2011] 9 SCC 462), the Court held that in order to hold whether an offence would fall under section 302 or section 304 Part I of the Code, the courts have to be extremely cautious in examining whether the same falls under Section 300 of the Code which states whether a culpable homicide is murder, or would it fall under its five exceptions which lay down when culpable homicide is not murder. In other words, section 300 states both, what is murder and what is not. First finds place in section 300 in its four stated categories, while the second finds detailed mention in the stated five exceptions to section 300. The legislature in its wisdom, thus, covered the entire gamut of culpable homicide that 'amounting to murder' as well as that 'not amounting to murder' in a composite manner in section 300 of the Code. Sections 302 and 304 of the Code are primarily the punitive provisions. They declare what punishment a person would be liable to be awarded, if he commits either of the offences.

19. An analysis of these two sections must be done having regard to what is common to the offences and what is special to each one of them. The offence of culpable homicide is thus an offence which may or may not be murder. If it is murder, then it is culpable homicide amounting to murder, for which punishment is prescribed in section 302 of the Code. This section deals with cases not covered by that section and it divides the offence into two distinct classes, that is (a) those in which the death is intentionally caused; and (b) those in which the death is caused unintentionally but knowingly. In the former case the sentence of imprisonment is compulsory and the maximum sentence admissible is imprisonment for life. In the latter case, imprisonment is only optional, and the maximum sentence only extends to imprisonment for 10 years. The first clause of this section includes only those cases in which offence is really 'murder', but mitigated by the presence of circumstances recognized in the exceptions to section 300 of the Code, the second clause deals only with the cases in which the accused has no intention of injuring anyone in particular. In this regard, we may also refer to the judgment of this Court in the case of *Fatta v. Emperor*, 1151. C. 476 (Refer: *Penal Law of India* by Dr. Hari Singh Gour, Volume 3, 2009)

20. Thus, where the act committed is done with the clear intention to kill the other person, it will be a murder within the meaning of section 300 of the Code and punishable under section 302 of the Code but where the act is done on

A grave and sudden provocation which is not sought or voluntarily provoked by the offender himself, the offence would fall under the exceptions to section 300 of the Code and is punishable under section 304 of the Code. Another fine tool which would help in determining such matters is the extent of brutality or cruelty with which such an offence is committed.

21. An important corollary to this discussion is the marked distinction between the provisions of section 304 Part I and Part II of the Code. Linguistic distinction between the two Parts of section 304 is evident from the very language of this section. There are two apparent distinctions, one in relation to the punishment while other is founded on the intention of causing that act, without any intention but with the knowledge that the act is likely to cause death. It is neither advisable nor possible to state any straight-jacket formula that would be universally applicable to all cases for such determination. Every case essentially must be decided on its own merits. The Court has to perform the very delicate function of applying the provisions of the Code to the facts of the case with a clear demarcation as to under what category of cases, the case at hand falls and accordingly punish the accused.

[34] Applying the principles of law as stated above to the present case, we are satisfied that there are sufficient evidence that proved the nexus between the appellants and the deceased's death. The material evidence to support such a conclusion is as follows:

(a) The appellants were last seen at the crime scene. Both SP3 and SP9 confirmed that both of the appellants were armed with samurai swords;

(b) Positive identification of the appellants by SP3 and SP9;

(c) SP10's evidence, regarding the chase by a black Honda City car. The second appellant was riding a Honda City car at the material time;

(d) SP10 saw the a group of men chasing after the deceased;

(e) The appellant's co-worker, Ah Hua, scolded SP3 in harsh words when SP3 failed to repay the loan; and

(f) The second appellant had run away to Kuala Lumpur and Genting Highlands before he was arrested at Bukit Mertajam.

[35] The cause of death of the deceased being homicidal was not disputed. The deposition of Dato' Dr. Bhupinder Singh (SP17) who conducted the post-mortem examination leaves no doubt that the death of deceased was the result of "... a blunt trauma on the head which caused a haemorrhage and swelling of the brain". A

[36] Viewing the nature of the injuries sustained by the deceased, it is our view that an inference can be made that the appellants had the intention to cause bodily injury to the deceased. However, the evidence of the pathologist is not conclusive as to whether the head injury inflicted on the deceased was sufficient in the ordinary course of nature to cause death. There is also no evidence on the fatality of the injury or the chances of survival. B C

[37] In determining whether the injuries inflicted on the deceased is sufficient in the ordinary course of nature to cause death, the court's enquiry is not confined to the intention of the appellants' only but the court will have to judge objectively from the nature of the injuries and other evidence, including the medical opinion, as to whether the injuries intentionally inflicted by the appellants on the deceased were sufficient in the ordinary course of nature to cause death (see *Virsa Singh v. The State of Punjab* [1958] SCR 1495). D E

[38] It is our considered view, though the injuries had resulted in the death of the deceased, but the prosecution had not led sufficient evidence to prove beyond reasonable doubt that those injuries inflicted upon the deceased were sufficient in the ordinary course of nature to cause death. The circumstantial evidence adduced did not bring home the specific *mens rea* under s. 300 of the Penal Code against both of the appellants. F G

Conclusion

[39] On an analysis of the case for the prosecution in the light of evidence on record, we are clearly of the view that the appellants' conviction and sentence under s. 302 of the Penal Code cannot be sustained but considering the gravity of the assault which led finally to the death of the deceased, the appellants would be certainly be guilty under s. 304(b) of the Code. We, therefore, substituted the conviction for sentence murder with one of culpable homicide not amounting to murder under s. 304(b) of the Penal Code. H I

A **Sentence**

[40] The task in determining an appropriate sentence in a culpable homicide not amounting to murder case is difficult as it involves balancing the competing demands of sentencing, in
B particular upholding the sanctity of life, but also recognising the level of culpability in the case at hand.

[41] The loss of a life, whether intentional or not, is always a serious and heinous offence, and society demands that it must be met with the appropriate condemnation.
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[42] Section 304(b) of the Penal Code provides the maximum penalty of ten years imprisonment. We are aware that the maximum penalty, in any given case, should be reserved for and imposed only in the exceptional cases.
D

[43] However, in the circumstances of the case, we are of the considered view that ten years of imprisonment would meet the ends of justice. The offence committed by the appellants is serious and it caused an innocent life of a young man. For no rhyme or
E reason, the appellants attacked and caused death of the deceased.

[44] Accordingly, while upholding the conviction of the appellants, we amend the charge from s. 302 to s. 304(b) of the Penal Code and sentenced the appellants to ten years imprisonment.

F **[45]** The appeal is disposed of accordingly.

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